

³ See 47 C.F.R. § 52.15(f)(3)(ii). See also, *NRO Order*, 15 FCC Rcd at 7594; *NRO Recon. Order*, 15 FCC Rcd at 353-54.

rules, which requires U.S. carriers receiving numbering resources from the North American Numbering Plan Administrator (“NANPA”), a Pooling Administrator, or another telecommunications carrier, to report semiannually on their actual and forecast number usage.⁴

3. Wendell W. Webster, the Trustee appointed in Net-Tel’s bankruptcy (Trustee), filed a response to the *NAL*. The Trustee reports that Net-Tel filed for Chapter 11 bankruptcy protection on September 28, 2000, and that this proceeding was converted to a liquidation under Chapter 7 on October 23, 2000.⁵ In addition, the Trustee reports that Net-Tel’s operation was terminated on December 20, 2000, and that effective April 30, 2001, all of Net-Tel’s operating assets were sold. The Trustee asserts that cancellation of the forfeiture based on Net-Tel’s Chapter 7 bankruptcy is consistent with precedent and will serve the public interest by protecting Net-Tel’s creditors and the distribution of estate assets.

III. DISCUSSION

4. The *NAL* states that the proposed forfeiture was assessed in accordance with applicable statutory provisions, the Commission’s rules and the Commission’s *Forfeiture Guidelines*.⁶ Section 503(b) of the Act requires that, in examining Net-Tel’s response, we take into account the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷ We find that rescission of the forfeiture is warranted in light of the Net-Tel’s Chapter 7 liquidation and the termination of its operations.⁸ The appointment of the trustee removed Net-Tel from any involvement in the dissolution of its business operations. Moreover, the sale of Net-Tel’s assets has been completed and Net-Tel will no longer operate as a common carrier. Based upon these circumstances, we find that it is in the public interest to rescind the forfeiture against Net-Tel.⁹

5. However, we emphasize that our decision to rescind the forfeiture in no way exonerates Net-Tel for its violation of section 52.15(f). The Commission has the discretion to evaluate each case based upon the facts and circumstances presented and to issue a forfeiture regardless of whether or not

⁴ *Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 99-200, 15 FCC Rcd 7574 (2000)(“*NRO Order*”); *recon. and clarification in part*, Second Report and Order, Order on Reconsideration in CC Docket 96-98 and CC Docket 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket 99-200, 16 FCC Rcd 306 (2000)(“*NRO Recon. Order*”).

⁵ Net-Tel filed for bankruptcy protection in the United States Bankruptcy Court for the District of Columbia, Case No. 00-1771.

⁶ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80; *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999)(“*Forfeiture Guidelines*”)(codified at 47 C.F.R. § 1.80(b)(4) Note).

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ See, e.g., *Dennis Elam, Trustee for Bakcor Broadcasting, Inc., Debtor*, 11 FCC Rcd 1137 (1996)(forfeiture rescinded after bankruptcy trustee was appointed and the violator was no longer associated with the subject stations); *Interstate Savings, Inc. d/b/a ISI Telecommunications*, 12 FCC Rcd 2934 (CCB 1997)(forfeiture rescinded where trustee appointed in Chapter 7 liquidation removing violator from operating as a common carrier and from involvement in dissolution or distribution of its assets. Requiring trustee to pay the forfeiture would diminish estate assets available to innocent creditors and serve no public interest).

⁹ *Interstate Savings*, 12 FCC Rcd at 2936.

there is a bankruptcy.¹⁰ Thus, a carrier's bankruptcy will not preclude scrutiny of its compliance with the Act and the Commission's rules, and we will take enforcement action where appropriate.

IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED THAT, pursuant to 47 U.S.C. § 504(b), and 47 C.F.R. § 1.80(f)(4), the *Notice of Apparent Liability* issued to Net-Tel Corporation IS CANCELLED.

7. IT IS FURTHER ORDERED that a copy of this Memorandum Opinion and Order shall be sent by Certified Mail/Return Receipt Requested, to Trustee Wendel W. Webster, c/o Linda Correia, Esq., Webster, Fredrickson & Brackshaw, 1819 H Street, N.W., Suite 300, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁰ *Coleman Enterprises, Inc., d/b/a Local Long Distance*, 16 FCC 10016 (2001).